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DEPARTMENT OF INSURANCE

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Regulatory Bulletin 2003-01*

TO: Licensed Bail Bond Agents

FROM: Charles R. Cohen
Director of Insurance

DATE: January 8, 2003

RE: **Premium Loans by Bail Bond Agents**

The Department has learned of cases where licensed bail bond agents may be engaging in activity that constitutes the unauthorized transaction of premium finance company business. In the scenario in question, a licensed bail bond agent advances the premium for the bail bond to the principal in the bail bond transaction and charges interest on repayment of the loan. Unless the bail bond agent is also licensed as a premium finance company, this activity violates Titles 6 and 20.

Prohibited Bail Bond Activity

A.R.S. § 20-340.03(A)(6) provides that a bail bond agent shall not accept anything of value from a principal except the premium, expenses and collateral security or other indemnity. Further, A.R.S. §20-340.03(D) and A.A.C. R20-6-601(E)(2) provide that a bail bond agent shall not directly or indirectly charge or collect monies or other valuable consideration from any person except for the following purposes: 1) to pay the premium at the established and approved rates; 2) to provide collateral; and 3) to be reimbursed for actual and reasonable expenses incurred in connection with the bail transaction.

These sections of Title 20 and the Arizona Administrative Code preclude a bail bond agent from charging interest under the bail bond agent's license because interest constitutes acceptance of a payment from a principal that is other than "premium and expenses." The bail bond agent is also prohibited from using the collateral provided by

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the principal to secure a loan because the law requires that the collateral be returned to the principal unless forfeited as a result of a defendant's failure to appear in court. The payment of interest on a loan of money for premium does not fall within any of the enumerated purposes for which a bail bond agent may accept monies or other consideration under the license. However, nothing in Title 20 precludes a bail bond agent from obtaining a premium finance company license from the State Banking Department.

Premium Finance Company Activity

Premium finance companies are regulated under Arizona Revised Statutes, Title 6, Chapter 14. A.R.S. §6-1401(6) defines a premium finance company as “a person engaged in whole or in part in the business of financing insurance premiums, entering into premium finance agreements with insureds or otherwise acquiring premium finance agreements from insurance producers or other premium finance companies.” A.R.S. §6-1402(A) prohibits a person from engaging in the premium finance company business without the required license. This is precisely what a bail bond agent is doing by advancing the surety bond premium on the principal’s behalf and charging interest on repayment of that loan. Therefore, a licensed bail bond agent may be subject to action by the State Banking Department for unlicensed premium finance activity pursuant to A.R.S. §6-1402(A). Nothing in Title 20 would preclude a licensed bail bond agent from obtaining a premium finance company license if he meets the State Banking Department’s licensing requirements.

The exemptions to licensure as a premium finance company include an exemption for agents or brokers licensed by the Department of Insurance who merely allow an insured to pay premiums on policies written by the agent or broker in installments if the agent or broker receives no interest or other fee. A.R.S. §6-1403(A)(2).¹ However, although collection of a limited service charge and a delinquency fee relative to payment of premium in installments is within the licensing exemption provided by A.R.S. §6-1403(A)(2), it is the Department’s view that A.R.S. §20-340.03 precludes a bail bond agent from collecting such a service charge or delinquency fee.

Please direct any questions about this regulatory bulletin to Gerrie Marks, Executive Assistant for Regulatory Affairs, 602-912-8456, gmarks@id.state.az.us.

¹ A.R.S. §6-1403(A)(2) refers to “agents or brokers” licensed by the Department of Insurance. The 2001 enactment of the insurance producer licensing act (Title 20, Article 3) replaced the terms “agent” and “broker” with the term “producers.” Bail bond agents were expressly included in the repealed definition of “agent,” and bail bond agents are not included in the new definition of “insurance producer.” Despite this change in Title 20, it is reasonable to conclude that the legislature did not intend to alter the application of this Title 6 licensing exemption to bail bond agents.